

REMARKS

Before entry of this Response, the status of the application according to the pending Office action is as follows:

- Claims 1-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending U.S. Application No. 10/392,171.
- Claims 1-25, 27, and 29-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,171,633 to Dulebohn et al. (hereinafter “Dulebohn”).

In view of the following remarks, Applicants respectfully request reconsideration and withdrawal of all grounds of rejection and passage of claims 1-35 to allowance in due course.

1. Claims 1-35 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-29 of copending U.S. Application No. 10/392,171. Applicants request that this rejection be held in abeyance until such time as a determination of otherwise allowable subject matter in the instant application is made. Applicants will consider filing a terminal disclaimer, should one be necessary, at the appropriate time.
2. Claims 1-25, 27, and 29-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dulebohn. Applicants respectfully traverse this rejection as applied to the claims.

Briefly, Dulebohn appears to disclose a stable composition containing milk, fruit or vegetable juice, gum-based stabilizers, and a composition containing an amino acid, an organic acid or inorganic acid, and a metal ion. The composition may be useful as a stable beverage with a pH from 3.0 to 7.0, preferably 3.0 to 4.6.

As stated in the Office action of March 16, 2006, Dulebohn “differ[s] as to the recitation

of specific particle sizes.” Applicants submit that Dulebohn fails to disclose any particle size. Dulebohn further does not appear to disclose the importance of “*mouthfeel*,” or disclose the relationship between particle size and both mouthfeel and the stability of the product.

Unlike the disclosure of Dulebohn, Applicants’ independent claims 1, 14, and 27 specifically disclose a required range of solid milk protein particle size. Applicants further state how the selection of the particle sizes may be important to the product. For example, Applicants state, at paragraph [0132] that: “*This pectin system, in combination with the processing sequence appears to have given us some control over the usually chalky mouthfeel that is present in most fruit juice/milk combination products. This may be due in part to the particle size distribution. The unique particle size distribution for each of the preferred products is also believed to enhance the stability of the preferred products.*” Accordingly, it is not obvious in view of Dulebohn to select any specific particle sizes.

The Applicants further respectfully submit that Dulebohn fails to disclose the range by weight of milk protein, including solid milk protein particles, as recited in independent claims 1 and 14, or the range by weight of edible protein, as recited in independent claim 29. In fact, Dulebohn does not appear to disclose any range of proteins.

Thus, Dulebohn does not teach or suggest a product incorporating a range of particle sizes for solid milk protein particles, as recited in Applicants’ independent claims 1, 14, and 27. Dulebohn does not disclose a specific range by weight of milk protein or edible protein, as required by Applicants’ independent claims 1, 14, and 29. Because claims 2-13, 15-25, 27, and 30-35 depend, either directly or indirectly, from the above recited independent claims, and include all of the limitations thereof, Applicants respectfully submit these claims are allowable as

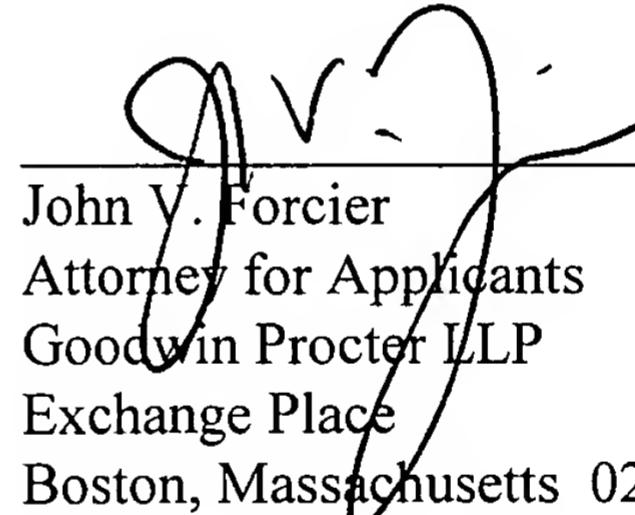
well.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-25, 27, and 29-35 under 35 U.S.C. § 103(a) as being unpatentable over Dulebohn.

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection, and allowance of claims 1-35 in due course. The Examiner is invited to contact Applicants' undersigned representative by telephone at the number listed below to discuss any outstanding issues.

Respectfully submitted,

  
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